

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	CC Docket No. 92-90
)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications, Inc. (“SBC”) hereby submits these reply comments in response to the comments filed in the above captioned proceeding. As SBC demonstrates herein, the record does not justify establishment of a national do-not-call registry. The Commission accordingly should reaffirm its existing company-specific do-not-call requirements, with minor modifications. Notwithstanding, if the Commission concludes otherwise and adopts a national registry, it should ensure consistency with the Federal Trade Commission’s (FTC) national do-not-call requirements.

I. THE RECORD DOES NOT WARRANT IMPOSITION OF A NATIONAL DO-NOT-CALL LIST, HOWEVER, IF THE COMMISSION DETERMINES OTHERWISE, IT SHOULD ENSURE CONSISTENCY WITH FCC’S NATIONAL REGISTRY

While a number of commenters voiced support for a national do-not-call registry, none of these commenters offered the legal and factual support necessary to justify such a registry. Commenters that support a national registry argue that a national registry is necessary to protect the privacy interests of consumers, but fail to justify why the existing rules, with minor modification, would be inadequate to protect these interests. In fact, it is not clear from the record which types of telephone solicitations are most vexing to consumers.

There is considerable focus in the record on the high number of abandoned calls and calls lacking calling party number (CPN) information.¹ The National Consumers League (NCL), for example, asserts that consumers are frustrated when CPN information is not transmitted because they cannot “recognize who is trying to reach them and decide whether they want to take the call or not.”² Further, NCL claims that when telemarketing issues are addressed at public events, the subject that generates the most anger from the audience is the use of predictive dialers. According to NCL, consumers often complain that they are “frightened and aggravated by the “dead air” and hang-ups that they frequently experience.”³ It is by no means clear that the privacy interests of consumers couldn’t be protected if the Commission took targeted measures to address these concerns.

To survive *Central Hudson*, the Commission must show that any remedy is narrowly tailored to an identifiable problem.⁴ Given that there is little, definitive evidence in the record as to the source of any privacy harm experienced by consumers, the Commission should start with narrow solutions. For example, implementing an abandonment rate for telemarketing calls and requiring telemarketers to pass CPN information would remedy certain specific types of telemarketing calls the record has demonstrated are annoying to consumers. A national registry, on the other hand, is broad in scope and is not narrowly tailored to any demonstrated consumer harm in the record.

SBC recognizes that the FTC has adopted rules to implement a national do-not-call registry.⁵ SBC continues to believe that such an approach is unwarranted and violates the First

¹ Electronic Privacy Information Center et al, at 12-13; NASUCA at 3-9; Office of People’s Counsel for the District of Columbia at 6; Public Utilities Commission of Ohio at 18-21.

² National Consumer League at 3.

³ *Id.* at 4.

⁴ *Central Hudson*, 447 U.S. at 564-565.

⁵ Telemarketing Sales Rules, 68 Fed. Reg. 4580 (Jan. 29, 2003) (to be codified at 16 C.F.R. pt. 310).

Amendment rights of telemarketers. Notwithstanding, if the Commission follows suit, the FCC should work with the FTC to implement one national registry, with uniform federal compliance requirements.⁶ Many common carriers, such as SBC, use third party telemarketers who are subject to the FTC's telemarketing rules. It would be wasteful and inefficient to have companies subject to two federal do-not-call regimes. Likewise, the Commission should coordinate implementation of the registry with the states to minimize duplication and eliminate inconsistent compliance obligations.

II. CERTAIN MODIFICATIONS TO THE COMMISSION'S EXISTING RULES ARE WARRANTED TO FURTHER PROTECT THE PRIVACY INTERESTS OF CONSUMERS AND COMMERCIAL SPEECH RIGHTS OF TELEMARKETERS.

The record makes clear that certain modifications must be made to the Commission's existing rules to better protect consumer privacy interests and the interests of telemarketers. Specifically, the record warrants revisions to the Commission's "established business relationship" exemption, establishment of an abandonment rate for calls involving predictive dialers, and a shortening of the time period for honoring do-not-call requests. Importantly, the FTC has adopted requirements that would allay many consumer and telemarketer concerns involving the foregoing issues, and SBC urges the Commission to follow suit. Below, SBC addresses each of these issues in turn.

1. The Commission should impose a threshold for abandoned calls to allay consumer concerns regarding the use of predictive dialers.

As the record shows, consumers are very concerned about the number of abandoned calls. Many commenters have asked the Commission to eliminate telemarketers' use of predictive dialers in order to minimize the number of abandoned calls or "hang ups" experienced

⁶ If a national do-not-call regime is established, the Commission should ensure that the "established business relationship" exemption permits carriers to market reasonably-related products of their affiliates and vice versa. Further, the exemption should extend to a carrier's third party telemarketers.

by consumers.⁷ Elimination of these devices, however, is not warranted. Rather, the more appropriate approach is for the Commission to take targeted measures to address this problem.

Numerous commenters in this proceeding, including SBC, support adoption of an abandonment rate to address consumer concerns about excessive “hang ups.”⁸ Such measures would appropriately balance telemarketers’ interests in engaging in telephone solicitations in the most efficient manner, with consumer interests in substantially minimizing abandoned calls. The FTC has concluded that adoption of an abandonment rate is the right approach, and has recently adopted an abandoned rate of three percent for telemarketers subject to its jurisdiction. There is ample support in the record here for analogous Commission action.⁹ SBC, thus, urges the Commission to establish an abandonment rate of three percent.

2. The FCC should extend its “established business relationship” exemption to affiliates and permit entities a reasonable period to market their products and services to customers after they have terminated their relationship.

The Commission’s “established business relationship” exemption should extend to affiliated entities of companies that have an established business relationship with a consumer. Contrary to NASUCA’s assertions,¹⁰ consumers expect that companies with whom they have an existing relationship will inform them of reasonably-related products and services, even if such products are offered by affiliated entities. Congress certainly envisioned this, as evidenced by the fact that it specifically permits BOCs to jointly market services with their long-distance affiliates. Likewise, the FTC has concluded that affiliates should be encompassed in any

⁷ Dennis Brown at 5; John Shaw at 6; Douglas McKenna at 7.

⁸ Consumer Bankers Association at 7-8; Convergys at 5-6; Electronic Retailing at 14-16; NASUCA at 3-7; WorldCom at 41-45; Direct Marketing Association at 30-33.

⁹ Office of the People’s Counsel for the District of Columbia at 6-7, Public Utilities Commission of Ohio at 11-12; Association of Communications Technology Professions at 3-4; AT&T Wireless at 18; Comcast at 8-11; Convergys at 5.

¹⁰ NASUCA at 17-18.

“established business relationship” exemption. As defined, the FTC’s “established business relationship” exemption will extend to those affiliates of the seller “that the consumer would reasonably expect to be included given the nature and type of goods or services offered and the identity of the affiliate.”¹¹ A similar rule is warranted here. As SBC discussed at length in its comments, a company’s decision or obligation to offer certain products or services via affiliates should not affect the channels it may use when it engages in permissible joint marketing.

The Commission should also adopt the FTC’s approach and permit entities a reasonable period of time to contact customers that have taken their business elsewhere. As SBC and Sprint demonstrated in their comments, winback telemarketing is an inherent part of any competitive process. Consumers benefit because they have the ability to learn quickly of competing services and pricing plans and carriers benefit because they can respond quickly to changing market conditions. Importantly, consumers are not burdened by such telemarketing because they can always request to be placed on a company’s do-not-call list.

Although SBC supported a one-year period in its comments for winback telemarketing, it now believes, in light of the FTC’s findings, that an 18-month window is warranted. As the FTC correctly recognized, “...18 months is an appropriate time frame because it strikes a balance between industry’s needs and consumers’ privacy rights and reasonable expectations about who may call them and why.”¹² In addition, as the FTC noted, limiting the period to 18 months “would be at least as restrictive as the majority of states that have such an exemption.”¹³ Further, adoption of an 18-month timeframe would ensure uniformity in federal rules.

¹¹ Telemarketing Sales Rules, 68 Fed. Reg. 4580, at * 38-39.

¹² *Id.* at 36.

¹³ Twelve states have imposed a time limitation for contacting former customers. Eight of the states permit a window ranging from 18 months to 3 years.

3. The Commission should shorten the period for honoring do-not-call requests.

Under the FCC's existing rules, consumers that request to be placed on company-specific do-not-call lists remain on the list for 10 years. SBC supports commenters' requests for a shortened period for honoring do-not-call requests,¹⁴ and urges the Commission to reduce the period to five years. While SBC recognizes that many states have even shorter periods for honoring such requests, e.g. 2-3 year periods, SBC believes it is prudent for the Commission to adopt a timeframe consistent with the FTC's 5-year timeframe to ensure uniformity in federal rules governing do-not-call requests.

In addition, SBC urges the Commission to follow the FTC's lead and require do-not-call lists to be purged every two years.¹⁵ As the FTC correctly recognized, a significant number of phone numbers change every year and numerous consumers move every year, resulting in numbers being disconnected and/or reassigned.¹⁶ Without a process in place to counteract this effect, numbers that have been reassigned to other consumers would remain in the registry, even if those consumers did not object to telephone solicitations. A purging of do-not-call registries, whether company-specific or national, every two years would minimize this concern and further help maintain the accuracy of any do-not-call registry.

¹⁴ American General Finance at 3; American Teleservices Association at 97-100; Direct Marketing Association at 16-17; Household Bank at 4; Newspaper Association of America at 8; Comcast at 11-12; Mortgage Bankers Association of America at 7; Qwest at 2.

¹⁵ Under the FTC's rules, the national registry must contain a process that will "periodically check all telephone numbers in the national registry against national databases, and those telephone number that have been disconnected or reassigned will be purged from the registry." Telemarketing Sales Rules at 164.

¹⁶ *Id.*

III. CONCLUSION

For the foregoing reasons, SBC respectfully requests that the Commission retain its existing company-specific do-not-call rules, with the modifications proposed herein. Notwithstanding, should the Commission determine that a national registry is necessary, it should work with the FTC and states to implement one national registry with a single set of compliance obligations.

Respectfully Submitted,

/s/ Davida M. Grant

Davida M. Grant
Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, NW
Suite 400
Washington, D.C. 20005
202-326-8903 – phone
202-408-8763 – facsimile

Its Attorneys

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